IN THE HIGH COURT OF JUDICATURE AT PATNA
C. REV. No.197 of 2005
W i t h
CWJC No.109 of 2002
SRI A.K.THAKUR @ AMRENDRA KUMAR.
Versus
THE STATE OF BIHAR & ORS

5/ 19/9/2008. Civil Review No.197/05 has been filed for reviewing the order dated 4.8.2005 passed in C.W.J.C. No.109/02 by which the writ application was dismissed.

Learned counsel for the State very fairly submits that the writ application had adequately pleaded and enclosed documents with regard to the penal action initiated against the petitioner in context of recovery of the sum in question. To that extent, the order dated 4.8.2005 suffers from error of record. The fairness on the part of the learned counsel for the State makes the work of the Court much easier.

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The review application and the writ application have therefore been heard together with the consent of the counsels for the parties at this stage itself.

Learned counsel for the petitioner assailed the order dated 16.4.1999 to submit that for an alleged advance of 1983, even for a minor punishment of recovery, a show cause notice was required to be issued. The letter under reference was not a show cause notice, but only communicated a decision already taken for

recovery. It contained no details of dated etc. of the advances alleged to have been taken by the petitioner and neither did it spell out the reasons why the vouchers stated to have been submitted by the petitioner toward expenses incurred against the advances taken was not accepted even while acknowledging that the petitioner had submitted expenditure vouchers for Rs.21,820.00 against an advance taken of Rs.31,820. The show cause was, therefore, stale in time, quite apart from being vague and was not, in fact, a show cause notice at all but only a communication of a decision already taken.

Learned counsel for the State sought to raise issues with regard to the advances taken and liabilities for reimbursement of the petitioner from the counter affidavit.

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This Court is afraid that the respondents cannot be permitted to do so. The law stands well settled by now that an order of the Government has to be tested on the basis of recitals in the order itself and cannot be supplemented or explained by a counter affidavit. If the order is, per se, bad in law, the counter affidavit cannot infuse life into it.

This Court has no hesitation in holding that the order dated 16.4.1999 was, in fact, not a show cause notice at all but only communicated a final decision

already taken calling upon the petitioner to deposit. The show cause was vague and stale issued nearly 16 years later. The law stands well settled that a show cause notice, even for a minor punishment, is to be given with an open mind and only after proper consideration of the reply appropriate orders may be passed. The consequential order dated 3.6.1999 does not fulfil the said requirements.

Civil Review No.197/05 and C.W.J.C. No.109/02 are **allowed**. The impugned orders dated 13.4.1999 and 3.6.1999 are hereby quashed. Any amount deducted from the petitioner in the meantime, shall be refunded to him within a maximum period of three months from the date of receipt/production of a copy of this order.

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(Navin Sinha, J)